

BACKGROUND

Educational Assistants of Laconia, NEA-New Hampshire (Association) filed unfair labor practice charges on November 11, 1996, pursuant to RSA 273-A:5 I (a), (e), (g) and (h), alleging that the Laconia School Board breached the collective bargaining agreement and refused to bargain when it failed to continue to pay unit employees for lunch periods as agreed and then required members to submit incorrect time sheets. The Laconia School Board (Board) filed its response on November 27, 1996. Hearing on the charges was deferred for advisory arbitration at the request of Educational Assistants of Laconia. The matter was heard before the Board on May 27, 1997.

FINDINGS OF FACT

1. The Laconia School Board employs teachers, educational assistants and other personnel in the operation of its schools and so is a "public employer" within the meaning of RSA 273-A:1 X.
2. Educational Assistants of Laconia, NEA-New Hampshire was duly certified on June 8, 1994, as the bargaining agent for educational assistants who are employed by the Board.
3. The Board and the Association are parties to their first collective bargaining agreement (CBA) signed April 10, 1996, and effective through June 30, 1997. (Association Exhibit 1).
4. In the process of negotiations regarding a lunch hour, the Association proposed a paid, uninterrupted, duty-free one half hour lunch period and the School Board responded with an offer for a paid, duty free lunch period of twenty minutes. The compromise, Article 6.3 reads: "The Board agrees that each employee will have a paid, uninterrupted, duty-free lunch, the duration to be equal to the student lunch time." (Association Exhibit A)
5. After review by the City Finance Committee and ratification by the Laconia City Council on April 10, 1996, the CBA, including the article pertaining to the lunch period, went into effect. Bargaining

unit members were compensated for their lunch times for three pay periods when it was discovered that money to pay the cost of lunches for bargaining unit members had not been appropriated. Bargaining unit members were told not to request payment for lunch times on their time sheets but to indicate that they hadn't worked during that time. Payment for educational assistants' lunch periods ceased. School Board members testified that they had not known that money for aides' and assistants' lunch periods was a new cost item but believed that members had been paid for lunches in the past. No new monies for the paid lunch periods were included in the calculations of costs of the CBA.

6. Chris Hayes, business administrator, testified that she learned of the problem and notified School Board members. She estimates the financial impact of the oversight to be about \$150,000 over two years. The matter was put before the City Council for approval but was rejected in August, 1996.
7. Article 8.4 of the CBA allows either party to seek advisory arbitration. The matter was grieved and the advisory decision of the arbitrator, Arnold Zack, is in the file. (Association Exhibit B).

DECISION AND ORDER

In the process of negotiating, the responsibility for ascertaining the costs of proposals rests with the public employer who has access to the necessary data. It is the School Board who is statutorily responsible for formulating the budget to be presented to the legislative body. RSA 197:5-a. In this case, the task of calculating the costs of the new contract was assigned to the business manager. The onus for the \$150,000 error cannot be shifted to the public employees since budget preparation is not in their hands.

Appeal of Sanborn Regional School Board, 133 N.H. 513 (1990) requires that all cost items of a new CBA be submitted to the legislative body for approval in order to be enforceable. However, Sanborn does not result from a fact pattern such as this in which there was specific approval of the wording of Article 6.3. of the two year contract but a failure on the part of the

School Board to calculate and submit the costs of this one article. The Laconia School Board's actions in this matter constitute an unfair labor practice violative of RSA 273-A:5, (e), (g) and (h) and the educational assistants must be made whole.

So ordered.

Signed this 8th day of AUGUST, 1997.


EDWARD J. HASELTINE
Chairman

By majority vote. Members E. Vicent Hall and Seymour Osman in the majority. Chairman Edward J. Haseltine dissenting.

Chairman Haseltine dissents as follows:

I dissent from the majority for the following reason. The cost item of paid lunches was not properly presented to the legislative body in the initial instance as required by 273-A:5 I (e) and Appeal of Sanborn Regional School Board, 133 NH 513 (1990). When the error was recognized after reasonable negotiations, the matter, a cost item, was presented to the City Council, the legislative body, and was rejected in August of 1996.